

4 Official Opinions of the Compliance Board 43 (2004)

PUBLIC BODY – MARYLAND PUBLIC SECONDARY SCHOOLS ATHLETIC ASSOCIATION, HELD NOT TO BE A PUBLIC BODY

April 5, 2004

Mr. William L. Miller

The Open Meetings Compliance Board has considered your complaint that the Maryland Public Secondary Schools Athletic Association (“MPSSAA”) violated the Open Meetings Act by holding an unlawfully closed session on an unspecified date in Laurel, Maryland. The complaint contended that the MPSSAA had excluded you and another interested citizen from what the complaint contended should have been an open meeting. Because the Compliance Board finds that the MPSSAA is not a “public body” subject to the Act, there was no violation.

I

Complaint and Response

The complaint provided certain information, as background, about a controversy over the eligibility of a student-athlete who played football for Patterson High School in Baltimore City. Officials of the school system apparently determined that the player was ineligible and, consequently, Patterson was required to forfeit two games.¹ Evidently, the sanctions imposed on the player and the school were appealed to the MPSSAA.

According to the complaint, the hearing on this matter (on a date not specified in the complaint) “was conducted by Mr. Ned Sparks with the ... [MPSSAA]. It is my understanding ... [that] Mr. Sparks has his office at the Maryland State Department of Education and, I assume, he is therefore a State employee. The meeting was held at the Best Western, ... in Laurel, Maryland. I think the meeting room ... was paid for with State funds as was the luncheon served to the representatives of that association. Thus, I believe that ... this

¹ Of course, the Compliance Board has no jurisdiction to consider, and does not comment about, the underlying issue of the player’s eligibility.

was a State sponsored function.”² The gist of the complaint is that Mr. Sparks indicated that neither you nor the Assistant Athletic Director at Patterson would be permitted to observe the meeting. The complaint stated your belief that you were “unfairly excluded and illegally shut out of what should have been an open meeting of a State sponsored group,” the MPSSAA.³

In a timely response on behalf of the MPSSAA, Mr. Edward F. Sparks, its Executive Director, indicated that the MPSSAA was not subject to the Open Meetings Act. In addition, Mr. Sparks contended that, because the meeting in question involved a review of an individual student’s records, admittance of anyone other than school officials, the student, and his parents would have violated confidentiality requirements.

II

Analysis

If an entity is not a “public body,” it is not subject to the Open Meetings Act. The term “public body” means a multi-member entity that is either “created by” any of several formal legal enactments or “appointed by” the Governor or chief executive authority of a political subdivision, but only if the appointees include at least two individuals from outside the government. §10-502(h) of the State Government Article, Maryland Code.⁴

We can immediately rule out the second possibility. The MPSSAA consists of the 184 public high schools that are its members. MPSSAA Constitution Article IV. Neither the Governor nor any local jurisdiction chief executive has appointed the MPSSAA’s governing bodies (a board of control and an executive council). Nor are members of the public part of the governing bodies; all are school system representatives. Consequently, the MPSSAA would be a public body subject to the Act only if it was “created by” one of the formal means listed in the definition, including “a rule, resolution, or bylaw.”

² It is not clear from the materials available to the Compliance Board whether the meeting was conducted by the executive council of the MPSSAA or a committee.

³ The complaint also requested that various actions be taken if the Compliance Board found a violation. We do not find a violation. In any event, even if we did, we lack the authority to order that any actions be taken.

⁴ All statutory references in this opinion are to the State Government Article.

The MPSSAA, as we understand the facts, was organized by local school authorities in 1946 in order to bring some greater structure to the conduct of interscholastic athletics among the public secondary schools in Maryland. There is no evidence that the creation of the MPSSAA was attributable to a resolution or other formal action of the State Board of Education. In 1991, the State Board of Education by resolution *recognized* the role of the MPSSAA, but neither then nor subsequently has the State Board of Education *assumed control over* the MPSSAA. The MPSSAA remains what it has been since it was created: an association of public high schools, not a creature of the State Board of Education or of any single local board of education.

To be sure, the MPSSAA helps carry out what is rightly considered a governmental function: supervising interscholastic athletics. But the fact that the State Board of Education and the local boards have delegated to the MPSSAA a portion of this responsibility and provide fiscal and other support does not transform the entity into a public body. Unlike, for example, the municipal zoo commission held to be a public body in *Andy's Ice Cream, Inc. v. City of Salisbury*, 125 Md. App. 125, *cert. denied*, 353 Md. 473 (1999), the MPSSAA was not formed initially, or transformed later, in a way that fits anywhere within the Act's definition of "public body." Perhaps the Maryland General Assembly might decide at some point to broaden the definition, so as to encompass all entities that carry out public functions. But we cannot do so in our role as interpreter of existing law.

III

Conclusion

In summary, the Open Meetings Compliance Boards finds that the Maryland Public Secondary Schools Athletic Association is not a public body subject to the Open Meetings Act. Consequently, the Act did not apply to the meeting in question in Laurel, and the MPSSAA was not constrained by the Act in its decisions about access to the meeting.⁵

OPEN MEETINGS COMPLIANCE BOARD

Walter Sondheim, Jr.
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⁵ In light of our conclusion, we need not consider the MPSSAA's alternative assertion that the law on the confidentiality of student records in any event mandated that the meeting be closed.